IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1061

WINDWARD SHIPPING (LONDON) LIMITED, *et al.*,

Petitioners,

—v.—

AMERICAN RADIO ASSOCIATION, AFL-CIO, *et al.*,

Respondents.

ON CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FOURTEENTH SUPREME JUDICIAL DISTRICT OF TEXAS

BRIEF OF THE REPUBLIC OF LIBERIA AS *AMICUS CURIAE*

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The interests of the Republic of Liberia in the instant case are limited but important. They lie at the heart of this dispute. The Liberian merchant marine is today the largest in the world; Respondents would blockade Liberian vessels from American ports. It is the position of the Republic of Liberia that Respondents' actions, and those of their individual members, constitute an open interference with the internal order, economy, management and affairs of vessels of the Republic of Liberia, and that such attempted interference is not protected or sanctioned by any applicable law, but, on the contrary, is in violation not only of the law of this land, but also of international law and Liberian law, via reciprocal treaty provisions.

Accordingly, the Republic of Liberia requests the permission of the Court to appear herein and to submit the following brief in the capacity of *amicus curiae*. Both Petitioners and Respondents have consented to the filing of this brief.

The Republic of Liberia respectfully urges this Honorable Court to reverse the judgment of the court below, dated May 17, 1972, with directions to remand this case to the District Court of Harris County, 164th Judicial District of Texas, for hearing and determination on the merits.

Opinions Below

The opinions and orders of the courts below appear at pp. 125-139 of the joint Appendix to the Briefs on the merits herein.

Question Presented

Whether the courts of the several States have jurisdiction to hear and determine the matter raised by Petitioners, where specific treaty provisions both guarantee their access to the courts and guarantee freedom of commerce and navigation.

Treaty Provisions Involved

TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES AND LIBERIA. SIGNED AT MONROVIA, AUGUST 8, 1938. (54 STAT. 1739).

ARTICLE I

The nationals of each of the High Contracting Parties shall be permitted . . . to engage in . . . commercial work of every kind without interference; to carry on every form

of commercial activity which is not forbidden by the local law; . . . and generally to do anything incidental to or necessary for the enjoyment of any of the foregoing privileges upon the same terms as nationals of the State of residence or as nationals of the nation hereafter to be most favored by it . . . .

. . . . . .

The nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, and in all degrees of jurisdiction established by law.

. . . . . .

ARTICLE VII

Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties equally with those of the most-favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation.

ARTICLE XIV

The merchant or other private vessels and cargoes of one of the High Contracting Parties shall, within the territorial waters and harbors of the other Party in all respects and unconditionally be accorded the same treatment as the vessel and cargoes of that Party, irrespective of the port of departure of the vessel, or the port of destination, and irrespective of the origin or the destination of

the cargo. It is especially agreed that no duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges of whatever denomination, levied in the name or for the profit of the Government, public functionaries, private individuals, corporations or establishments of any kind shall be imposed in the ports of the territories or territorial waters of either country upon the vessels of the other, which shall not equally, under the same conditions, be imposed on national vessels.

Article XV

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown.

Article XVI

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties shall be permitted to discharge portions of cargoes at any port open to foreign commerce in the territories of the other High Contracting Party, and to proceed with the remaining portions of such cargoes to any other ports of the same territories open to foreign commerce, without paying other or higher tonnage dues or port charges in such cases than would be paid by national vessels in like circumstances, and they shall be permitted to load in like manner at different ports in the same voyage outward, provided, however, that the coasting trade of the High

Contracting Parties is exempt from the provisions of this Article and from the other provisions of this Treaty, and is to be regulated according to the laws of each High Contracting Party in relation thereto. It is agreed, however, that nationals and vessels of either High Contracting Party shall within the territories of the other enjoy with respect to the coasting trade most-favored-nation treatment.

CONSULAR CONVENTION BETWEEN THE UNITED STATES AND LIBERIA, OCTOBER 7, 1938 (54 STAT. 1751).

ARTICLE X

A consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in cases, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto provided, however, that such jurisdiction shall not exclude the jurisdiction conferred on local authorities under existing or future laws.

Foreign Law Involved

The Liberian Maritime Law

(Title 22 of the Liberian Code of Laws of 1956, effective March 1, 1958, as amended through 9 May, 1970, effective 24 November 1970.)

• • • • •

Section 353

Protection of Freedom of Association.—It shall be unlawful for any employer, employer organization or labor organization to coerce any seaman in the exercise of his choice whether to establish, become a member of or participate in any labor organization, provided that any provision in a labor contract entered into pursuant to Section 355 of this Chapter shall not be deemed to be violative of this Section. (Eff. Aug. 18, 1964.)

• • • • •

Section 357

Protection of Labor Contract.—Whenever an employer or employer organization and a labor organization have entered into a labor contract providing that such labor organization shall be sole bargaining representative of seamen pursuant to Section 355 it shall be unlawful:

(a) for the employer or employer organization to bargain with or enter into a labor contract pertaining to such seamen with any other labor organization; or

(b) for any other labor organization to attempt to bargain with or enter into a labor contract pertaining to such seamen with the employer or employer organization;

prior to thirty days before the termination of such agreement or before the expiration of three years from the effective date of such agreement, whichever event shall first occur. (Eff. Aug. 18, 1964.)

SECTION 358

Strikes, Picketing and Like Interference.—(1) It shall be unlawful for any person or labor organization subject to this Chapter to promote or to engage in a strike or picketing or like interference with the internal order or operation of a vessel, unless such strike, picketing or like interference:

(a) takes place at a port at which the Shipping Articles terminate; and

(b) a majority of seamen on the vessel involved have voted by secret ballot that such action be taken; and

(c) at least thirty days written notice of intention to take such action has been given to the employer or the Master.

(2) Nothing contained in Section I hereof shall be deemed to permit any strike, picketing or like interference with the internal order or operation of a vessel contrary to the provisions in any existing labor contract. (Eff. Aug. 18, 1964.)

* * * * *

Statement of the Case

The Republic of Liberia adopts the statement of the case appearing in the Brief of Petitioners.

Summary of Argument

The United States and Liberia have respective Treaty obligations to ensure freedom of commerce and navigation each to the other's vessels and cargoes. The explicit language of the Treaty and the spirit of the Treaty are both entitled to an interpretation most favorable to the rights herein claimed by Liberia. Respondents and their members, as individual citizens of the United States, are bound to honor the Treaty obligations and to take no action impairing the Treaty rights; should this Court permit the provisions of the Treaty to be ignored and Liberia's freedom of commerce and navigation to be impaired, other nations most favored by the United States will thereby be similarly affected. The courts of the States are not only free from any restrictions of federal law to take cognizance of this matter, but are affirmatively bound by the Treaty and the Constitution of the United States to do so. The judgment of the court below is therefore in error.

ARGUMENT

I.

Introduction

The courts below, going upon the most restrictive conceivable interpretation of the National Labor Relations Act, refused even to consider the basic issue of treaty violation by Respondents and their individual members.

The treaty here drawn into principal consideration is the Treaty of Friendship, Commerce and Navigation (hereafter "FCN") between the United States and Liberia signed

at Monrovia on August 8, 1938. The Treaty is completely reciprocal in its terms, and was drawn to accommodate subsequent changes in maritime circumstance, though at that time the maritime power of Liberia was very small, and that of the United States very great. Liberia, then as now, was a country rich in natural resources which were beginning to be exported in quantity; the only means of such commerce being the sea, the potential benefit to American Flag shipping was obvious.

The effect of this Treaty was to open up the commerce of Liberia to the United States on a most-favored nation basis. But beyond "most-favored-nation" clauses, certain explicit rights in respect of navigation and merchant shipping were granted by each Party to the other; those most relevant to this case are contained in Articles VII, XIV, XV, and XVI, which are set out *supra* pp. 3-4.

The issue in this case is of absolutely crucial international importance. A treaty right ignored is a treaty right abrogated; and a treaty obligation ignored becomes no obligation at all. Nowhere are such treaty questions more important than here, where the national security and international commerce of the contracting Parties are directly and obviously affected by the outcome.

A substantial percentage of imports to, and exports from, the United States of America are carried by Liberian vessels, pursuant to the FCN Treaty. If vessels of the Republic of Liberia may actually be prevented by Respondents from unloading or receiving cargoes at ports of the United States of America, the result must be that both the economies of Liberia and the United States will suffer.

But the vital questions of law, both domestic and international, overshadow even the considerable economic im-

pact. For the Treaty here in question between the United States and Liberia undertakes that:

> ". . . there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties . . . shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation."[1]

and that

> "Merchant vessels . . . under the flag of either of the High Contracting Parties *shall be permitted to discharge* portions of cargoes at any port open to foreign commerce in the territories of the other High Contracting Party . . . and they *shall be permitted to load* in like manner at different ports in the same voyage outward . . . ."[2]

A classic exposition of the nature of treaties and their status as the supreme law of the land under the Constitution[3] is that of John Jay in *The Federalist,* No. LXIV:

> "Others, though content that treaties should be made in the mode proposed, are averse to their being the supreme laws of the land. They insist, and profess to believe, that treaties, like acts of assembly, should be repealable at pleasure. This idea seems to be new and peculiar to this country, but new errors, as well as new

[1] Article VII.

[2] Article XVI. Italics supplied.

[3] Constitution of the United States of America, Article VI, cl. 2.

truths, often appear. These gentlemen would do well to reflect that a treaty is only another name for a bargain and that it would be impossible to find a nation who would make any bargain with us, which should be binding on them absolutely, but on us only so long and so far as we may think proper to be bound by it. They who make laws may, without doubt, amend or repeal them; and it will not be disputed that they who make treaties may alter or cancel them; but still let us not forget that treaties are made, not by only one of the contracting parties, but by both; and, consequently, that as the consent of both was essential to their formation at first, so must it ever afterwards be to alter or cancel them. The proposed Constitution, therefore, has not in the least extended the obligation of treaties. They are just as binding, and just as far beyond the lawful reach of legislative acts now, as they will be at any future period or under any form of government."

Put another way, the sanctity of a treaty rests upon a pledge made before the world by the States party to it that it is a solemn contract, made for consideration, which each commits itself to uphold and which each may hold the other to.

II.

The Treaty is entitled to the broadest construction in favor of the rights claimed by a Party to it.

If the language of the Americo-Liberian FCN Treaty were ambiguous as to the navigation and merchant shipping rights accorded by the Parties each to the other the status of this, as other treaties, as the supreme law of the land would require application of the specific canon of interpretation laid down and repeatedly enunciated by this Honorable Court:

> "Where a treaty admits of two constructions, one restrictive as to the rights, that may be claimed under it, and the other liberal, the latter is to be preferred. Shanks v. Dupont, 3 Pet. 242, 7 L.Ed. 666. Such is the settled rule in this court." *Hauenstein* v. *Lynham,* 100 U.S. 483, 487 (1879).
>
> "In choosing between conflicting interpretations of a treaty obligation, a narrow and restricted construction is to be avoided as not consonant with the principles deemed controlling in the interpretation of international agreements. Considerations which should govern the diplomatic relations between nations and the good faith of treaties, as well, require that their obligations should be liberally construed so as to effect the apparent intention of the parties to secure equality and reciprocity between them. For that reason if a treaty fairly admits of two constructions, one restricting the rights which may be claimed under it, and the other enlarging it, the more liberal construction is to be preferred. Jordan v. K. Tashiro, 278 U.S. 123, 127,

49 S.Ct. 47, 73 L.Ed. 214; Geofroy v. Riggs, 133 U.S. 258, 271, 10 S. Ct. 295, 33 L.Ed. 642; In re Ross, 140 U.S. 453, 475, 11 S. Ct. 897, 35 L.Ed. 581; Tucker v. Alexandroff, 183 U.S. 424, 437, 22 S. Ct. 195, 46 L.Ed. 264; Asakura v. City of Seattle, 265 U.S. 332, 44 S. Ct. 515, 68 L.Ed. 1041." *Factor* v. *Laubenheimer,* 290 U.S. 276, 293-294 (1933).

See also *Bacardi Corp.* v. *Domenech,* 311 U.S. 150, 163 (1940); *Sullivan et al.* v. *Kidd,* 254 U.S. 433, 439 (1921); and *Nielsen* v. *Johnson,* 279 U.S. 47, 52 (1929).

Ambiguity, however, should be no problem here—the broad intent of this Treaty is explicit. Thus it is stated in Article VII that

> ". . . there shall be freedom of commerce and navigation."

One of the plain and flatly-stated objectives of this Treaty is that the ports of each Party shall be open in foreign commerce to the other (Articles VII, XIV, XVI); this Treaty pledges each Party and its nationals to welcome the merchant shipping of the other without hindrance or discrimination.

As declared by the U. S. Department of State with respect to FCN treaties in general:

> "Their objectives are the normal objectives of friendship between nations: to protect the foreigner, to maintain good order in everyday affairs, to encourage mutually beneficial relations, to strengthen the rule of law in the dealings of one nation with another. They are practical expressions of good faith and good

> neighborliness as much as they are legal contracts. Their worth rests as much on their equity and reasonableness as on the number and scope of the privileges they specify; *and their spirit, which goes beyond the limits and wording of the treaties themselves, is in every way as important as the letter of the undertakings they actually make.*"

(Hearings before Subcommittee of Committee on Foreign Relations, U. S. Senate, 82d Cong. 2d Sess., May 9, 1952; italics supplied.)

That expression reflects as well the 35-year consistent view of the FCN Treaty by the Republic of Liberia.

III.

The individual and collective actions of Respondents and their members violate the FCN Treaty.

It is, of course, one of the "facts of life" in the maritime commercial world of today that American seamen enjoy, by far, the highest wage scale in the industry. In that sense, alone, the wages of the crews of every non-American merchant ship in the world are "substandard." But there are other standards than the purely domestic ones Respondents assert, and it is obvious that the wage scales of the Liberian fleet must be and remain realistic and competitive—otherwise there will be ships, but no crews to sail them. Respondents have created a situation in which their wage scale is far from "standard" and is inflated to a non-competitive level. They would therefore blockade the navigation and maritime commerce of Liberian vessels having competitive wage scales—by actions

which are intended and designed to curb the free and effective access of ships of a friendly foreign government to United States ports, working a severe disruption if not a cessation of this foreign commerce; for as stated by the Supreme Court in *United States* v. *Holliday,* 70 U.S. (3 Wall.) 407, 417 (1865):

> "Commerce with foreign nations, without doubt, means commerce between citizens of the United States and citizens or subjects of foreign governments, as individuals."

It is also a fact that the actions and objectives of Respondents (including here, as elsewhere in this brief, their individual members) in this case are discriminatorily directed at merchant vessels and cargoes of the Republic of Liberia, both as compared to those of the most favored of other foreign nations and to American Flag vessels and cargoes themselves.

A similar ability to disregard treaties guaranteeing freedom of commerce and navigation was once asserted on behalf of certain patentholders; but as this Court said, in *Brown* v. *Duchesne,* 60 U.S. (19 How.) 183 (1856), at 197-198:

> "The construction claimed by the plaintiff would confer on patentees not only rights of property, but also political power, and enable them to embarrass the treaty-making power in its negotiations with foreign nations. . . . And if a treaty should be negotiated with a foreign nation, by which the vessels of each party were to be freely admitted into the ports of the other, upon equal terms with its own, upon the pay-

ment of the ordinary port charges, and the foreign Government faithfully carried it into execution, yet the Government of the United States would find itself unable to fulfil its obligations if the foreign ship had about her, in her construction or equipment, anything for which a patent had been granted. And after paying the port and other charges to which she was subject by the treaty, the master would be met with a further demand, the amount of which was not even regulated by law, but depended upon the will of a private individual."

"... [T]he Government would be unable to carry into effect its treaty stipulations without the consent of the patentee. . . . The same difficulty would exist in executing a law of Congress in relation to foreign ships and vessels trading to this country. And it is impossible to suppose that Congress in passing these laws could have intended to confer on the patentee a right of private property, which would in effect enable him to exercise political power. . . ."

The disruption by Respondents of the navigation and commerce of Liberian vessels is, *ipso facto,* in violation of the FCN Treaty.

The most authoritative general pronouncement on the binding effect of treaty provisions on private citizens was made by Chief Justice Taney in *Kennett* v. *Chambers,* 55 U.S. (14 How.) 38 (1852), at 49-50:

"The intercourse of this country with foreign nations, and its policy in regard to them, are placed by the Constitution of the United States in the hands

of the government, and its decisions upon these subjects are obligatory upon every citizen of the Union. He is bound to be at war with the nation against which the war-making power has declared war, and equally bound to commit no act of hostility against a nation with which the government is in amity and friendship. This principle is universally acknowledged by the laws of nations. It lies at the foundation of all government, as there could be no social order or peaceful relations between the citizens of different countries without it. It is, however, more emphatically true in relation to the citizens of the United States. For as the sovereignty resides in the people, every citizen is a portion of it, and is himself personally bound by the laws which the representatives of the sovereignty may pass, or the treaties into which they may enter, within the scope of this delegated authority. And when that authority has plighted its faith to another nation that there shall be peace and friendship between the citizens of the two countries, every citizen of the United States is equally and personally pledged. The compact is made by the department of the government upon which he himself has agreed to confer the power. It is his own personal compact as a portion of the sovereignty in whose behalf it is made."

Moreover, the duty and obligation of individual citizens of the United States to abide by the letter and spirit of the FCN Treaty with Liberia was declared in the Proclamation of President Roosevelt dated November 13, 1939, publishing the terms of the Treaty. 54 Stat. 1750 (1941).

"Now, THEREFORE, be it known that I, Franklin D. Roosevelt, President of the United States of America,

> have caused the said Treaty to be made public, to the end that the same and *every article and clause thereof may be observed and fulfilled with good faith by* the United States of America and *the citizens thereof.*" (Italics supplied.)

In considering the force and effect of this Proclamation it must be borne in mind that in the area of treaty construction, the interpretations made by the executive are entitled to great weight before the courts. *Sullivan* v. *Kidd,* 254 U.S. 433, 442 (1921).

This FCN Treaty, unmodified by the Parties and unaltered in its effect, stands as the supreme law of the land. The actions of Respondents are in direct violation of this Treaty and of that law.

IV.

As a Most-Favored-Nation, any impairment of Liberia's freedom of navigation and commerce becomes an impairment to all nations similarly favored.

During the negotiations between the United States and Liberia with respect to the 1938 Treaty, a Department of State Memorandum by Mr. Hugh S. Cumming, Jr., Division of Western European Affairs, dated June 21, 1937, stated:

> "The reasons for proposing a new treaty of commerce and navigation with Liberia are:
>
> "1. To . . . put our commercial relations with Liberia on an unconditional most-favored-nation basis. . . ." 2 Foreign Relations of the U.S. 785 (1937).

A most-favored-nation ("MFN") clause "is intended to include all subjects which fall properly under the general heading or title of the formal agreement"; Herod, *Favored Nation Treatment* 5 (1901). Consequently, the favor to be accorded Liberia with respect to navigation and commerce, and particularly the explicit guarantees contained in Articles VII and XVI of the FCN Treaty[4] is, *a fortiori*, the favor to be accorded to all other FCN-MFN's. This is so because

> "... the purpose of the favored-nation pledge is to provide for equality of treatment in commercial relations on the part of a particular State toward other States; and, with this in view, to make certain that any subsequent privileges that may be granted to any one State, shall be automatically extended to other States with which such treaties shall have been concluded." Puente, *The Foreign Consul* 90 (1926).

But the converse of this proposition must also be true, for if any favor granted to one MFN (*e.g.*, freedom of commerce and navigation of its vessels) is impaired, then no similarly-vested MFN's may thereafter enjoy a greater favor—and, under the terms of treaties such as that with Liberia, the United States may thereby work upon itself a reciprocal impairment of the enjoyment of its favor in the territories of any or all of its MFN treaty partners.

The matters in the case at bar thus have implications running far beyond the mutual Treaty obligations of the United States and Liberia; and the Republic of Liberia, accordingly, takes the gravest concern in this issue.

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[4] *Supra*, pp. 3, 4.

V.

The courts below erred in denying jurisdiction.

(A) *The Courts of the States Are Not Barred by Federal Law From Hearing This Matter.*

In reality, the activities of Respondents are the same which confronted the Supreme Court of the United States in *Incres Steamship Co., Ltd.* v. *International Maritime Workers Union,* 372 U.S. 24 (1963). There, the ostensible purpose of the picketing by an American labor organization was to organize non-resident alien crew members who were serving aboard Liberian vessels under Liberian articles, and the picket signs there contained the now familiar "substandard" canard. Here there is no ostensible purpose; the Respondents have, by deliberate design, and in an attempt to circumvent *Incres,* carefully refrained from making any demands whatever upon the Republic of Liberia, the Port of Houston Authority, the Petitioner owners of the picketed vessels, their officers and crews, or the foreign maritime unions which represent the officers and crews of these vessels under current collective bargaining agreements. The real and obvious purpose in both cases is, however, identical—*viz.*, either to blockade ports of the United States to vessels of Liberia and so force that commerce to avail itself of United States vessels manned by Respondents, or to force an immediate alteration of the scale of wages and benefits of non-resident alien seamen (*i.e.*, to break the labor contracts now in force) to achieve a parity with that demanded by Respondents for their own members. This parity objective, with the result of eliminating the competition, has been flatly admitted by

Respondents (R. 157-59, 190-91). What is evidently meant by the picket signs' plea to "Help the American seamen" is "Help the American seamen to break the existing labor contracts between this vessel and her crew so that we may gain in competitive advantage." Thus the actions of Respondents are a direct and flagrant interference with the internal economy, management and affairs of these vessels,[3] and this Court has consistently held that in such cases there is no preemption by federal law of any applicable state law. *Benz* v. *Compania Naviera Hidalgo, S.A.*, 353 U.S. 138 (1957); *McCulloch* v. *Sociedad Nacional*, 372 U.S. 10 (1963); *Incres, supra*, 372 U.S. 24 (1963).

International Longshoremen's Association v. *Ariadne Shipping Company, Ltd.*, 397 U.S. 195 (1970) is inapplicable to the instant case. The glaring and simple distinction between this case and *Ariadne* is that the picketing there was by domestic labor against wages of domestic labor; not—as here—by domestic labor against wages of foreign labor. There the non-resident alien crew of a foreign-flag vessel undertook to unload cargo in an American port with the help of non-union American dock labor; the American longshore union, contending that this work belonged to them, picketed the vessel. This Honorable Court, reasoning that "Application of United States law to resolve a dispute over the wages paid the men for their longshore work, accordingly, would have threatened no interference in the internal affairs of foreign-flag ships likely to lead to conflict with foreign or international law" (397 U.S. at 200), distinguished *Benz*, *McCulloch* and *Incres*.

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[3] Which, under the Consular Convention between the United States and Liberia, is exclusively within the consular jurisdiction over labor affairs. See Article X, *supra*, p. 5.

Moreover, the activities of Respondents here are in reciprocal conflict with foreign law—the Liberian Maritime Law; the relevant sections, 353, 357 and 358, are set out at pp. 6-7, *supra*. The particularly applicable prohibition is contained in Sec. 358(2) of the Liberian Maritime Law:

> "Nothing . . . shall be deemed to permit any strike, picketing or like interference with the internal order or operation of a vessel contrary to the provisions in any existing labor contract."[6]

Likewise, Respondents' blockade tactics are in violation of international law—the FCN Treaty, particularly Articles VII and XVI and the reciprocity of Article XIV.

(B) *The Courts of the States Are Bound to Apply the Treaty Law of the United States.*

The Court below apparently thought consideration of treaty obligations foreclosed by the labor law doctrine of "pre-emption." This is, patently, an overly broad application of that doctrine and an overly modest approach to the function of the courts. The doctrine of preemption was created, as was said in the *San Diego Building Trades Council* decision, 359 U.S. 236 (1959), to entrust "administration of the labor policy for the Nation to a centralized administrative agency, armed with its own procedures, and

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[6] It is interesting to compare the parallel language of the relevant statutory law of the State of Texas; Texas Revised Civil Statutes Annotated, Article 5154d, §4 (1971):

> "It shall be unlawful for any person, singly or in concert with others, to engage in picketing, which, directly or indirectly, is to secure the disregard, breach or violation of a valid existing labor agreement arrived at between an employer and the representatives designated or selected by the employees for the purpose of collective bargaining . . ."

equipped with its specialized knowledge and cumulative experience." This policy lies within "the exclusive competence of the National Labor Relations Board," and thus state courts must be barred "if danger of State interference with national policy is to be averted."

But, with respect to treaty questions, the picture is entirely different. The N.L.R.B. has no "competence" at all in interpreting and applying treaty provisions, much less an "exclusive competence." To the contrary, it must be excluded from the consideration of such questions because "the construction of treaties is the peculiar province of the judiciary." *Jones* v. *Meehan*, 175 U.S. 1, 32 (1899). In this important work, the state courts are not only *not* excluded, but are full partners with the federal courts. They may—and indeed have a duty to—interpret and apply treaty provisions in the litigation of private rights, in the same way and with the same authority as the federal courts. *Asakura* v. *Seattle*, 265 U.S. 332 (1924); *Maiorano* v. *Baltimore & Ohio Railroad Co.*, 213 U.S. 268 (1909). In Texas, this power and this duty have been previously recognized. *San Lorenzo Title & Improv. Co.* v. *Caples*, 48 S.W. 2d 329, 331 (Tex. Civ. App. —— El Paso 1932), aff'd. 124 Tex. 33, 73 S.W.2d 516 (1934); *Terrazas* v. *Holmes*, 115 Tex. 32, 275 S.W. 392 (1925).

Article VI, Clause 2, of the Constitution of the United States provides in part that ". . . all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; *and the Judges in every State shall be bound thereby* . . ." (Italics supplied.) And Article I of the FCN Treaty declares that "The nationals of each High Contracting Party shall enjoy

freedom of access to the courts of justice of the other . . . for the prosecution . . . of their rights, *and in all degrees of jurisdiction established by law.*" (Italics supplied.)

Petitioners are Liberian nationals; their rights as such under the Constitution and the Treaty have been ignored by the courts below.

CONCLUSION

The judgment below should be reversed, and the case remanded to the court of first instance for hearing and determination on the merits.

Dated: August 14, 1973

Respectfully submitted,

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Certificate of Service

I hereby certify that on this 14th day of August, 1973, three copies of the within Brief *amicus curiae* were mailed, postage prepaid, to Counsel for the parties listed below. I further certify that all parties required to be served have been served.

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